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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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Peter Gingras

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EXAMINER

SWEET, THOMAS

ART UNIT

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3774

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DELIVERY MODE

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PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/621,941	Applicant(s) GINGRAS, PETER	
	Examiner Thomas J. Sweet	Art Unit 3774	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 27 December 2007.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-12, 15-23, 25 and 85 is/are pending in the application.
- 4a) Of the above claim(s) 4-7 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☐ Claim(s) _____ is/are rejected.
- 7) ☒ Claim(s) 1-3, 8-12, 15-23, 25 and 85 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Response to Arguments

Applicant's arguments filed 12/27/2007 have been fully considered but they are not persuasive. Applicant elected species without traverse, so until a generic claim is allowable the other species will not be rejoined. Claims 4-7 remain withdrawn.

Applicant's arguments, see 6, filed 10/09/2007, with respect to the rejections under 35 USC 112 have been fully considered and are persuasive. The rejections of claims 3, 12, 14, 15 and 22-24 under 35 USC 112 have been withdrawn.

Applicant's arguments, see page 7, filed 10/09/2007, with respect to the rejection(s) of claim(s) 1,8-10, 12, 14-16, 18-21 and 25 under 35 USC 102 have been fully considered and are persuasive. Therefore, the rejection has been withdrawn. However, upon further consideration, a new ground(s) of rejection is made in view of Pacetti et al (US 6355058).

Applicant's arguments, see page 7, filed 10/09/2007, with respect to the rejection(s) of claim(s) 17 and 22 under 35 USC 102/103 have been fully considered and are persuasive. Therefore, the rejection has been withdrawn. However, upon further consideration, a new ground(s) of rejection is made in view of Pacetti et al.

Applicant's arguments filed 10/09/2007 have been fully considered but they are not persuasive. Regarding the 35 USC 103 rejection, clear motivation of substitution of functionally equivalent material was established. However, the rejection under 35 USC 103 will not be used against the current amended claims in favor of the 35 USC 102 rejection in view of Pacetti et al.

Claim Rejections - 35 USC § 112

The following is a quotation of the first paragraph of 35 U.S.C. 112:

Art Unit: 3774

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

Claims 1-3, 8-12, 15-23, 25 and 85 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. The amendment to the claims recites “axially oriented” which is not described in the specification such that one of ordinary skill in the art would recognized possession. Biaxially oriented is disclosed but there is no support for axially oriented.

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 1-3, 8-12, 15-23, 25 and 85 are rejected under 35 U.S.C. 112, second paragraph, as being incomplete for omitting essential elements, such omission amounting to a gap between the elements. See MPEP § 2172.01. The omitted elements are: biaxially oriented polymer. Applicant is trying to establish some sort of axial orientation but the disclosure discusses biaxially orient (two dimensional, i.e. sheet). Axially oriented is indefinite since it is unclear which axes are oriented and how. Axially oriented means oriented base on one axis which scope can not be determined since every object has an infinite number of axes (any one of which it can be said to be oriented with respect to).

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

Art Unit: 3774

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-3, 8-10, 12, 15-23, 25 and 85 are rejected under 35 U.S.C. 102(b) as being anticipated by Pacetti et al (US 6355058). Pacetti et al discloses a non-woven soft tissue implant (stent, fig 1) comprising a porous biocompatible film (16, fig. 2) having a plurality of cells (as shown in fig. 1), a thickness of less than about 0.015 inches (col 4, lines 24-27), and a surface area ratio less than 1.5 (inherent, as clearly seen in fig. 1, plus it s expandable to much smaller ratio), wherein the biocompatible film (16) comprises one or more films (film-a thin layer or coating) of axially oriented (there are an infinite number of axes for which this film is oriented).

Regarding claims 9 and 10, (Previously presented) The non-woven soft tissue implant of claim 1, wherein one or more of the cells in the plurality of cells has a diameter, measured along the longest axis of the cell, of about 10 g to about 10,000 g. (“There is no inherent limitation on the stent's diameter or length, and as such will be dependent upon a particular application for the stent.”, col 7, lines 39-41, given a typical stent diameter of ½ and inch or less meets this claim based on the drawings. Note- precise proportions are not being used in this rejection).

Regarding claim 12, fully expanded the cells are rectangular so the cells are essentially rectangular at any expansion.

Regarding claim 15, 25 micron equates to about 0.001 inches.

Allowable Subject Matter

Claim 11 would be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. 112, 2nd paragraph, set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.

Conclusion

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Thomas J. Sweet whose telephone number is 571-272-4761. The examiner can normally be reached on 6:45am - 5:15pm, Tu-Th.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Corrine M. McDermott can be reached on 571-272-4754. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Art Unit: 3774

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Thomas J Sweet/

Primary Examiner, Art Unit 3774